11-18-19

RULING REGARDING BLANKET SHACKLING OF DETAINEES DURING TRANSPORT TO COURT FROM JAIL FACILITIES, AND WHEN BEING HELD IN COURT HOUSE HOLDING CELLS

There are numerous cases before the court today all with motions regarding removal of shackles during transport and in court holding cells. All have been transported to the court house in shackles and held in the court house detention cells in shackles. All have objected to the shackling on multiple grounds. During the court proceedings today, 11-18-19, all counsel involved in these matters, County Counsel, Public Defenders, and Alternate Defenders asked the court to take judicial notice of filings submitted in multiple cases on these topics. In accordance with the request from all counsel, and in light of the narrow issues presented in these cases, the court has taken judicial notice of the filings submitted in Orange County Superior Courts, and will refer to them in this written ruling.

I: REQUEST TO REMOVE SHACKLING RESTRAINTS DURING TRANSPORT FROM THE JAIL TO THE COURT HOUSE

The court will first consider the issue of shackling during transport to the courthouse from the jail facility. Because the Sheriff is in charge of the county jail and the inmates housed at the jail facilities, the Sheriff is afforded wide latitude and deference regarding their policies, including the transport of inmates from the jail to the county courthouses.

The court in People v. Jacobs, (1989) 210 Cal. App. 3d, 1135, 1141 (overruled on other grounds) stated that "[t]he customary practice of utilizing physical restraints while transporting a prisoner from place to place, e.g. from jail to courtroom and back, is a matter of common knowledge, and generally acknowledged as acceptable for the protection of both the public and defendant." That court clearly stated that it "is legally permissible to transport a

prisoner … in physical restraints." Id. Furthermore, the California Supreme Court in People v. Cunningham, (2015) 61 Cal. 4th 609, considered the issue of shackling during transport. In that case the Court noted that the defendant was transported to the jail from the courthouse and thru the public hallways of the courthouse in restraints. The Court in Cunningham allowed for the **"limited-in-transit"** use of physical restraints. Id. At 634 (emphasis added).

Having reviewed the applicable case law, this court denies the motion to be free of shackles during the **limited time** of transportation from the jail to the courthouse. The court will defer to the expertise of the Sheriff's department regarding the necessity for shackles during that phase of transportation.

II: REQUEST TO REMOVE SHACKLING RESTRAINTS INSIDE THE COURTHOUSE HOLDING CELLS

This court must first consider and determine what type of facility the courthouse holding cells are. Are they jail facilities as County Counsel contends? Are they "courtrooms" as the Public Defender and Alternate Defender contend?

If this court finds that the in courthouse holding cells that are outside of an actual courtroom facility, (hereinafter Courthouse holding cells), are purely detention facilities, then the appropriate next step in the analysis is to determine whether each defendant has exhausted the appropriate administrative remedies, if there are any. The court in In re Thompson, (1975) 52 Cal. App. 3d 780, 783 stated that '[a] litigant must exhaust his administrative remedies before he may resort to the courts. Jurisdiction to entertain an action for judicial relief is conditioned upon completion of the administrative procedure." Id. Even the fact that constitutional rights are alleged to be at play does not relieve the litigant of the necessity of first seeking administrative relief. In the case of jail inmates, grievances regarding conditions of confinement, are subject to California Code of Regulations Title 15, Section 1073(a). Thus, in those cases, the proper administrative remedies must be exhausted prior to seeking judicial relief.

Certainly, the portion of the MOU submitted to the court in County Counsel's filings establishes that in Orange County, the Court has given the Sheriff the responsibility of court security services.

> "Such services shall include the following: maintaining the custody and security of defendants in criminal cases while they are in court holding facilities; escorting such defendants to courtrooms; providing bailiffs and other personnel when providing necessary courtroom security."
>
> MOU page 8

However, that does not provide the Sheriff carte-blanche to conduct its duties in any manner it deems appropriate without any level of review by the courts.

As this court ruled in People v. Elia Martinez, (November 1, 2019) 19CF2919, the Sheriff's office may not have a blanket shackling policy for defendants presented in court. The sheriff must be able to provide specific facts about a specific defendant to the judicial officer hearing the matter in order to justify the use of in-courtroom restraints. Each judicial officer is free to rule on such individual cases as it deems appropriate after considering all information presented to the court. This court also noted that a formal hearing is not required when information is provided to a court regarding a specific defendant's security considerations "so long as the court makes its own determination about the need for restraints based on facts shown to it, and does not simply defer to the recommendation of law enforcement." People v. Lomax, (2010) 49 Cal. 4th 530, 561. Also, the court noted that case law establishes that it the burden of the People to establish the need for in courtroom shackling. People v. Miller, (2009) 175 Cal. App. 4th 1109, 1114.

As it pertains to the issue of courtroom security and the security in courthouse holding cells, the Sheriff is responsible for security. However, as County Counsel itself has acknowledged in its filing dated 11-1-19, in People v. Gonzalez, 15WM05307, (one of the many cases currently litigating these exact issues in the Orange County Superior Courts), on page 5, lines 1 and 2 "the Orange County Superior Court and the Orange County Sheriff's Department are jointly responsible for the Courthouse security plan."

When considering the question of whether the courthouse holding cells are purely detention facilities, the court must consider their purpose. The purpose of these holding cells is to allow detainees to have their cases heard in open court. These cells are necessary to allow an accused to avail themselves to the judicial process. Of course, access to the judicial process Is a fundamental right guaranteed to each accused by the United States Constitution. The court house holding cells are literally the gateways to justice for all detained defendants. As such, they are not purely detention facilities.

County Counsel has cited the 9th Circuit ruling in Khatib v. County of Orange, (2011) 639. F. 3d 898 defining the Orange County Superior Court holding cells as "jails". This court does not find that on point in the cases at hand. In the Khatib case, the 9th Circuit was applying federal statutes and their application to holding facilities in a court house. For purposes of the applicability of the federal statute, the Court in that case found that the holding cells were subject to the federal statute. However, the 9th Circuit did not address the issue of whether the holding was subject to the California regulations governing holding facilities, or the California regulations defining court holding facilities as "a local detention facility constructed within a court building… used for the confinement of persons solely for the purpose of a court appearance for a period not to exceed 12 hours." Title 15, section 1006. The California regulations governing what type of facility the court holding cells are, regarding whether or not a holding cell is a Type II detention facility, was not at issue in that case.

County Counsel has relied heavily on the United States Supreme Court ruling in Bell v. Wolfish, (1979) 441 U.S. 520 to argue that before pursuing a judicial remedy, all detainees must first exhaust any available administrative remedies. However, upon a close review of the Wolfish case, this court noted that the ruling in Wolfish stated that "the operation of our **correctional facilities** is peculiarly the province of the Legislative and Executive Branches of our government, not the Judicial." Id. At 547-548. (emphasis added). That statement by the United States Supreme Court in its ruling illustrates why, in the cases at hand, it does not control. The in-courthouse holding cells at issue here are not **"correctional facilities"**. These holding cells are the only way for detainees to access justice. They are necessary for security purposes, but they **DO NOT SERVE AS PENAL INSTITUTIONS.** This fact was acknowledged in the declaration of Lt.

Tracy Harris, (attached as an exhibit in the brief submitted by County Counsel on 10-30-19 in the Omar Baron case 19CF2936 on page 1 of that declaration, lines 15-16), where she stated that "the court is not specifically designed as a custodial facility." Because this court views the courthouse holding cells as necessary portals to the court justice system which do implicate security concerns, but not as penal institutions, they are a type of "hybrid" situation. They are certainly being run by the Sheriff, but they are also an extension of the courtroom. In order to actually enter a courtroom all in-custody defendants must spend some amount of time in these holding cells. Thus, the courts interest in judicial dignity and decorum are implicated. The court in Wolfish recognized that inmates do retain constitutional rights. However, "those rights may be 'subject to restrictions and limitations… The fact of confinement as well as the legitimate goals and policies of the **penal institution** limits these retained constitutional rights" Id. At 545-546. (emphasis added). But the Supreme Court further stated that "there must be a 'mutual accommodation between institutional needs and objectives and the provisions of the constitution that are of general application." Id. At 546.

Just as the Sheriff is in charge of courtroom security as well as maintaining security in the courthouse holding cells, their authority is subject to some level of judicial authority. As mentioned above, a court abuses its discretion if it "abdicates this decision-making authority to security personnel…" People v. Jackson, (1993) 14 Cal. App. 4th 1818, 1825. It is this courts view that the court must make its own determination based on specific facts relevant to each inmate as to the need for restraints. The court "may not rely solely on the judgment of jail or court security personnel in sanctioning the use of such restraints." People v. Mar, 28 Cal. 4th 1201, 1221; People v. Hill, (1998) 17 Cal. 4th 800. Even when security measures are necessary, courts should impose the least restrictive measure that is able to satisfy a court's security concerns. People v. Mar, 28 Cal. 4th at 1205**.** This court views the burden to be on the people to show a justification for the shackling.

The Wolfish court stated that there must be "mutual accommodation" of a defendant's constitutional rights and the need for the Sheriff's Department to maintain security. The court will consider the impact of the blanket shackling of detainees in the courthouse holding cells on certain of a defendant's constitutional rights.

A defendant has a right to be present at court proceedings. "A criminal defendant has a right to be personally present at certain pretrial proceedings and at trial under various provisions of law, including the Confrontation Clause of the Sixth Amendment to the United States Constitution, the Due Process Clause of the Fourteenth Amendment to the United States Constitution, [and] Section 15 of Article 1 of the California Constitution and Sections 977 and 1043." People v. Young, (2017) 17 Cal. App. 5 451, 466; see also People v. Cole, (2004) 33 Cal. 4th 1158; People v. Kelly, (2007) 42 Cal. 4th 763. The United States Supreme Court has stated that an accused has due process rights to be present at court proceedings, "even in situations where the defendant is not actually confronting witnesses or evidence against him." Kentucky v. Stincer, (1987) 107 S. Ct. 2658, 2667. In fact, due process guarantees every defendant a right "to be present in his own person whenever his presence has a relation, reasonably substantial, to the fulness of his opportunity to defend against the charge." Snyder v. Massachusetts, (1934) 291 U.S. 97, 105-106. "Thus a defendant is guaranteed the right to be present at any stage of the criminal proceeding that would contribute to the fairness of the procedure." Stincer, at 2667; People v. Waidia, 22 Cal. 4th. 690. The California Supreme Court in the Cunningham case acknowledged that shackling could be considered a barrier to an accused's right to be present in court when it stated that limited in-transit shackling did not present undue barriers to a defendant's right to be present and the court specifically noted that the defendant in the Cunningham case was not subject to hours of shackling in courthouse holding facilities. Cunningham, 61 Cal. 4th 609. In accordance with the request from all counsel in this matter, the court also takes judicial notice of the declaration of Nicole Jackson, submitted as Exhibit C to the filing submitted by the Alternate Defenders office on behalf of Guadalupe Delaluz, 17NF1925. Ms. Jackson stated in her declaration that rather than return to court and fight her case, she pled guilty against the advice of counsel in order to avoid being held in the holding cells in shackles all day.

The right of an accused to counsel is guaranteed by the Sixth Amendement to the United States Constitution. In Deck v. Missouri, (2005) 125 S. ct. 2007, the United States Supreme Court found that "the use of physical restraints diminishes that right. Shackles can interfere with the accused's ability to communicate with his lawyer." Id., at 2013. The court again stated that a defendant's "ability to

communicate with his counsel, is greatly reduced when the defendant is in a condition of total physical restraint." Illinois v. Allen, (1970) 397 U.S. 337, 344. Justice Brennan in his concurring opinion in the Allen case noted that shackling "offends not only the judicial dignity and decorum, but also that respect for the individual which is the lifeblood of the law. Allen, at 350 (Justice Brennan Concurring).

The effect that shackles have on a defendant's ability to effectively communicate with his lawyer is not limited to a courtroom setting. Shackling would have the same limiting effect in the courthouse holding cell as it does in a courtroom. An ability to discuss intricacies of a case, plea bargain offers, and proof issues are all vitally important, and are all affected by holding defendants in shackles for any substantial period of time in the courthouse holding cells. This court cannot pretend that what occurs on the other side of a closed door from this court room does not affect the ability of an accused to avail himself fully to the judicial process. Even if an accused was unshackled to make his or her brief courtroom appearance, the effects of lengthy shackling do not evaporate the moment he or she is unshackled and led through a door into the courtroom. This is all a part of the same process. The ability to effectively communicate with counsel cannot be dissected based on which side of the door an accused is seated. In fact, the 9th Circuit Court of appeals has noted that restraining an individual in shackles "may confuse and embarrass the defendant, thereby impairing his mental faculties and they may cause him pain." Ducket v. Godinez, (1995) 67 F.3d 734, 747-748. In People v. Harrington, (1871) 42 Cal. 165, 168 expressly stated that "any order or action of the Court which, without evident necessity, imposes physical burdens, pains and restraints upon a prisoner during the progress of his trial, inevitably tends to confuse and embarrass his mental faculties and thereby materially to abridge and prejudicially affect his constitutional right of defense." The time spent restrained in courthouse holding cells certainly would adversely affect the ability of any person to focus and communicate well with their counsel and the court.

Another area of concern for this court is whether and how the use of blanket shackling in the in courthouse holding cells impacts an accused's due process rights. The United States Supreme Court has stated that "liberty from

bodily restraint [is at] the core of liberty protected by the Due Process Clause." Youngberg v. Romeo (1982) 457 U.S. 307, 316.

The United States Supreme Court in Deck v. Missouri, (2005) 125 S. Ct. 2007, was very clear in its ruling and reasoning. That case involved a jury trial in both the guilt phase and the penalty phase. The Court stated that absent a specific showing regarding an individual defendant, a court may not allow a defendant to appear in shackles in front of a jury, either during the guilt or penalty phase. When the court made that ruling it referenced "a basic element of the 'due process of law' protected by the Federal Constitution. Thus, the Fifth and Fourteenth Amendments prohibit the use of physical restraints visible to the jury absent a court determination…" Id. At 2012. When making the ruling, the Court based its decision, not only on potential prejudice to a jury, but the court also focused on fundamental principles that apply in every court room setting. The Supreme Court "emphasized the importance of giving effect to three fundamental legal principles." Id. At 2013. The first principle the court acknowledged was that the presumption of innocence in every criminal case "'lies at the foundation of the administration of our criminal law.' Visible shackling undermines the presumption of innocence and … related fairness." Id. The second principle the court refenced is that the Constitution guarantees a criminal defendant the right to counsel in order to present a meaningful defense. The court found that "The use of physical restraints diminishes that right. Shackles can interfere with the accused's ability to communicate' with his lawyer." Id. Finally, the Court emphasized that the judicial process must be dignified. The Court did not specifically limit the need for a dignified judicial process to only proceedings in front of a jury. The Court held that "judges must seek to maintain a judicial process that is a dignified process. The courtroom's formal dignity, which includes the respectful treatment of defendants, reflects the importance of the matter at issue, …and the gravity with which Americans consider any deprivation of an individual's liberty through criminal punishment." ID. The United States Supreme Court in Illinois v. Allen (1970) 397 U.S. 337, 344 stated that the "use of this [shackling] technique is itself something of an affront to the very dignity and decorum of judicial proceedings…" The court in the Deck case went on to state that there are specific cases where, after individualized consideration of the circumstances, there may, in fact, be a need to shackle a

defendant during courtroom proceedings. "but any such determination must be case specific; that is to say, it should reflect particular concerns…" Id. At 2014. California cases have referred to the showing of necessity for shackling in front of a jury as a requirement of "manifest" need. People v. Fierro, (1991) 1 Cal. 4th 173; People v. Duran, (1976) 16 Cal. 3d 282, 290-291; People v. Cox, (1991) 53 Cal. 3d 618, 651.

The Supreme Court of California in People v. Fierro, (1991) 1 Cal. 4th 173 considered the issue of routine shackling of defendants at the preliminary hearing stage of a criminal case. The Court in that case ruled that during a preliminary hearing shackling of a defendant is not acceptable "absent some showing of necessity for their use." Id. At 220. The court did acknowledge that a lesser showing of necessity is required for a preliminary hearing than for a jury trial. However, the court referred to basic principles which would apply for any courtroom proceeding. The necessity of showing that a particular defendant needs to be shackled serves "not merely to insulate the jury from prejudice, but to maintain the composure and dignity of the individual accused, and to preserve respect for the judicial system as a whole; these are paramount values to be preserved irrespective of whether a jury is present during the proceeding." Id. At 219-220.

Case law is clear that during any jury trial or preliminary hearing situation, a decision regarding the necessity of shackling a particular individual must be made by a trial judge on a case-by case basis. People v. Miller, (2009) 96 Cal. Rptr. 3d 716. The court may not simply defer to law enforcement personnel, but must exercise its own discretion and make its own determination. Id. People v. Ervine, (2009) 47 Cal. 4th 745, 773. Furthermore, courts have determined that shackling should be used as a measure of last resort because of the affront it has on the dignity of judicial proceedings. People v. Soukomlane, (2008) 75 Cal. Rptr. 3d 496. It has also been held In the Mar case that even when security measures are necessary regarding a particular individual, the court should impose the least restrictive measure available. County Counsel has failed to persuade this court that fully shackling all detainees in the court holding cells is the least restrictive means to accomplish security goals. Particularly, when there have been no concerns brought to this courts attention regarding security issues when

detainees were not shackled in the holding cells up until October 2019, there is no factual basis before the court that evidences a need to shackle all detainees.

In addition to the above cited cases, this court has also read and considered the 9th Circuit opinion in United States v. Sanchez-Gomez, (2017) 859 F3d 649 (vacated by the United States Supreme Court on mootness grounds). Although this is a non binding opinion on this court, the reasoning set forth in the majority opinion is applicable to the cases before this court. All of the authority this court has considered has emphasized several principles which apply to every criminal hearing for each individual defendant. These fundamental principles are not reserved only for hearings in front of a jury or an evidentiary hearing in front of a court. "At the heart of our criminal justice system is the well-worn phrase, innocent until proven guilty… We must guard against any gradual erosion of the principle it represents, whether in practice or appearance. This principle safeguards our most basic constitutional liberties, including the right to be free from unwarranted restraints." ID. at 659-660. "liberty from bodily restraint includes the right to be free from shackles in the courtroom." Id. at 660. "This right to be free from unwarranted shackles no matter the proceeding respects our foundational principle that defendants are innocent until proven guilty. The principle isn't limited to juries or trial proceedings." Id. Every courtroom must be a place where "justice is administered with due regard to individuals whom the law presumes to be innocent… Thus, innocent defendants may not be shackled at any point in the courtroom unless there is an individualized showing of need." Id. "A presumptively innocent defendant has the right to be treated with respect and dignity". Id. The Sanchez-Gomez court went on to state that "Courtrooms are palaces of justice, imbued with a majesty that reflects the gravity of proceeding "[I]t is a place where justice is administered with due regard to individuals whom the law presumes to be innocent. That perception cannot prevail if defendants are marched in like convicts…Both the defendant and the public have the right to a dignified, inspiring and open court process." Id. "Criminal defendants, like any other party appearing in court, are entitled to enter the courtroom with their heads held high" Id. At 665.

The progress of a defendant's trial as stated above includes all stages of a defendant's criminal trial. This includes pretrial court appearances, even if they are non-evidentiary in nature. When defendants are brought to the courthouse

from jail at any time during the pendency of their case, they are necessarily participating in their defense and in the progress of their trial. In the October 30,2019 filing submitted by County Counsel in a related matter, (related because the same issues of pretrial shackling were at issue), County Counsel state on Page 2 lines 4-8 "indeed, the only time a court should apply the standard proposed by Defendant, and remove the decision regarding the use of restraints from the executive province of the sheriff,… is when the defendants due process rights are implicated by the use of restraints during court proceedings." In this court's view, every single time a defendant comes to court to appear on a case and participate in his defense it necessarily implicates his due process rights. His constitutional rights attach to him at all times.

This court finds that blanket shackling of in custody defendants demeans the dignity of the court process, the court room and the defendant and violates the due process rights of the accused. This court agrees with the court in the Duran case where it found that there is an "affront to human dignity, … disrespect for the entire judicial system which is incident to unjustifiable use of physical restraints." Duran, 16 Cal. 3d at 290-291. The court takes judicial notice of the declaration of Guadalupe Delaluz, submitted as Exhibit A in the November 15, 2019 filing submitted by the Alternate Defender in the Delaluz case, 17NF1925. In her declaration, Ms. Delaluz specifically recounts the indignity of being unable to hygienically manage her menstruation due to being shackled at the waist. Ms. Delaluz states:

> "the first time I was placed in shackles on 10-22-19, I had a mild panic attack. It was difficult to breathe and I began to panic because the waist chain was tight, it was difficult to breath and move, and I had to work very hard just to calm myself down to get through the day. …I was menstruating at the time, and was unable to properly manage my period because of the chains…" "The chains to my hands were also very short and did not allow me to have enough room to move. I was concerned that I would not be able to physically use the bathroom and properly clean myself because of limitation in my physical movements due to the shackles, as well as due to the location of the toilet paper, which was chained to the wall at an unshackled arms distance from the toilet….[I] decided to hold in my

urine and not attempt to change my menstruation pad for fear of bleeding on myself or the toilet and surrounding area, needing to ask others to help me change my menstruation pad and properly clean myself in a sanitary way, or the embarrassment either alternative would cause me. Because of this, I was both uncomfortable and self-conscious. It was degrading…"

She further stated:

"On 11-5-19, I was shackled for over 12 hours …Because I drank with my lunch I had to use the bathroom. It was nearly impossible for me to clean myself properly due to the limitations the shackles places (sic) on my ability to move my arms."

"There was also a woman in adult diapers in the holding cell at the courthouse who was not physically able to address her bathroom needs while shackled because of her limited range of movement. Even when this was brought to the guard's attention, she was not allowed to be unshackled to change her adult diaper or properly attend to her physical and sanitation needs, and remained in the same soiled diaper while at the courthouse."

Additionally, the court takes judicial notice of the Declaration of Sara Jacobson submitted as Exhibit B in the Delaluz matter. Ms. Jacobson states that:

"The waist chain was still so tight that it was hard to breath. I had to take shallow breaths due to the limited space, which made me feel out of breath and lightheaded throughout the day… I lost blood circulation to my hand…I still have small cuts on my wrist from the day I was brought to court in shackles."

Ms. Jacobson further stated:

"I had difficulty using the toilet in shackles because I couldn't reach far enough to wipe my privates properly."

Finally Ms. Jacobson stated:

"I was in so much pain and discomfort because of the shackles that I felt angry, frustrated and defeated when I saw my attorney in

court….I was too tired to express what I wanted. I felt like my character and power to decide were taken from me."

The court further takes judicial notice of the declaration filed by County Counsel in the Omar Baron matter 19CF2936, page 8 lines 13-14:

'In fact, OCSD has offered evidence that despite the waist chains and handcuffs most inmates can still eat, write and answer the call of nature."

This court finds that a system which holds the accused on the other side of a door in a courthouse, adjacent to the courtroom, for hours on the days that detainees are seeking to avail themselves of the court processes must accord the accused some level of human dignity . By stating that "most" inmates can carry out basic bodily functions, the County Counsel is admitting on behalf of the OCSD that some inmates cannot manage to carry out those basic bodily functions.

This court further relies on the provisions of California Penal code section 688 in making the determination that it is impermissible to allow a policy of blanket shackling of inmates in holding cells. Section 688 states "No person charged with a public offense may be subjected , before conviction, to any more restraint than is necessary for his detention to answer the charge." Cases have interpreted this to have application during jury trials, preliminary hearings and juvenile court appearances. On November 1, 2019 this court held that it is also applicable to every situation where an accused in present in a courtroom. Now, this court is extending that ruling to apply to the holding cells in the court houses.

The court is now specifically stating that individual defendants do not need to make a motion to the court to unshackle in the courthouse holding cells, because the use of shackling restraints in a courtroom and in the courthouse holding cells, absent a particular showing as to an individual defendant, is not allowed in Orange County courthouses. It is not the burden of the defendant to file a motion to prevent shackling on a routine basis. It should be the exception that a defendant is held in the holding cell in shackles. When that happens, it is the People's burden to produce some evidence or information for the record justifying that one individual defendant is appropriately restrained in shackles. Courts do not have to hold formal hearings before allowing the use of restraints,

however, "the record must show the court based its determination on facts, not rumor and innuendo." People v. Gamache, (2010) 48 Cal. 4th 347, 367. Therefore, the ban on shackling is not absolute. This ruling in no way seeks to limit an individualized assessment of security concerns by any judicial officer in a particular case. However, "any determination must be case specific; that is to say, it should reflect particular concerns, say special security needs or escape risks, related to the defendant…" Deck, at 2015.

The People must make a showing of some level of need for shackling. Miller. As a justification for the Sheriff's new blanket shackling policy County Counsel stated in the filing submitted in the case of People v. Omar Baron 19CF2936, on page 3 lines 10-16:

> "This minimal level of restraints is the least restrictive means to effectively restrain all inmates, regardless of classification, and still ensure the safety and security of the inmates being transported, the staff involved in transportation, and the staff of the courthouse. The ability to transport multiple classifications of inmates in a single trip to the courthouse results in a more efficient allocation of resources and avoids multiple trips of half full vehicles to transport inmates. It also ensures that inmates arrive on a more timely basis for court proceedings."

In the declaration of Captain Brad Valentine submitted by County Counsel in the Martinez case 19CF2919, to justify the blanket use of restraints on page 1 line 26, and page 2 lines 4-10 Captain Valentine states:

> "The court facilities are limited on space and staffing." "the Sheriff's Department has limited resources available to run all operations including court operations. The Sheriff's Department must constantly evaluate the allocation of those resources. The use of waist restraints on inmates… allows for more efficiencies with inmate movement throughout the court and allow court operations personnel to accommodate more inmates throughout the day."

In this court's opinion "efficiencies" do not justify the deprivation of an inmate's constitutional rights. The court in Tiffany A. V. Superior Court , (2007) 150 Cal. App. 4th 1344, a juvenile delinquency case stated that a decision to shackle must be made on a case by case basis and a court may not "justify the use of shackles solely on the inadequacy of the courtroom facilities or the lack of available security personnel to monitor them. Id.at 1359. Additionally, this court does not view shackling as a minimal level of restraint or only a minor change from the prior policy.

In the event that a reviewing court disagrees with this court's finding that the court house holding cells are a hybrid between custodial facilities and an extension of the court, thus subjecting the People to the requirement that an individualized showing of some level of need must be shown to justify any shackling of a particular defendant, this court has also analyzed whether the available administrative remedies adequately address the defendant's concerns.

A lack of exhaustion of administrative remedies does not bar this court from hearing this portion of the case if there are no effective administrative remedies available to a defendant. In re George A. Thompson; Ir re Roger F. Fagundes, (1975) 52 Cal. App. 3d 780. In fact, "[t]he requirement of exhaustion of administrative remedies does not apply if the remedy is inadequate. The doctrine … has not hardened into inflexible dogma. It contains its own exceptions as when… pursuit of and administrative remedy would result in irreparable harm, when the administrative agency cannot grant an adequate remedy… and when the aggrieved party can positively state what the administrative agency's decision in his particular case would be." In re Strick, 91983) 148 Cal. App 3d 906, 911.

The available administrative grievance procedures do not and cannot sufficiently protect the defendants' rights in this situation. When in custody defendants are brought to court by the Sheriff they are put in the court holding cells until it is time to take them into court. After their court appearances the inmates are returned to the holding cells until they are returned to the jail. This happens between 350 -450 times every day. (see declaration of lieutenant Tracy Harris submitted by County Counsel as an attachment to its brief filed in the Baron case.) When they return to the jail facilities they may file a grievance. But by the time they file that grievance the harm has been done. The defendants

have already suffered an infringement of their rights. As the Sheriff transports in-custody defendants to various court houses in Orange County every day that the courts are operating, this situation repeats itself multiple times. Due to the Sheriff's Department implementing blanket shackling requirements for all inmates in the holding cells, this is an ongoing situation for all the courthouses. Some of those defendants plead guilty, eliminating the need to return to court, some may be released, and some may have their cases dropped. No matter whether they must return to court again, or if they have resolved the case, they have already suffered the damage of the shackling restraints. Thus, requiring all individual defendants to exhaust administrative remedies in these cases would create a situation of continuing repeated harm with no actual remedy. In reality, there is no effective available administrative remedy for the inmates to pursue.

This order prohibiting the blanket shackling of detainees in the courthouse holding cells will be stayed until 11/22/19. This stay is granted in an effort to minimize security risks to the Sheriff's deputies and the inmates while a viable alternative security plan is implemented.